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Dkt. 43016-C/JPW/SHS

AUG 06 2001

TECH CENTER 1600/296

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Philip O. Livingston and Friedhelm Helling  
U.S. Serial No.: 08/475,784 Group Unit: 1645  
Filed : June 7, 1995 Examiner: P. Duffy  
For : GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS QS-21

Linda  
8/7/01

1185 Avenue of the Americas  
New York, New York 10036  
July 27, 2001

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

**COMMUNICATION REQUESTING CONSIDERATION ON  
THE MERITS OF A FIRST SUBMISSION AFTER FINAL  
REJECTION AND WITHDRAWAL OF FINALITY UNDER 37 C.F.R.  
§1.129(a) AND PETITION FOR A FIVE MONTH EXTENSION OF TIME**

This Communication is submitted pursuant to the provisions of 37 C.F.R. §1.129(a) to request consideration on the merits of an Amendment in Response to June 27, 2000 Final Office Action as a First Submission and withdrawal of finality of the June 27, 2000 Office Action.

On June 27, 2000, the United States Patent and Trademark Office issued a Final Office Action in connection with the above-identified application. A response to the June 27, 2000 Final Office Action was originally due on September 27, 2000. An Amendment in Response to June 27, 2000 Final Office Action and Petition for a Three Month Extension of Time was filed on December 27, 2000. A Notice of Appeal was filed on December 27, 2000 and an appeal brief was due on February 27, 2001. Applicants hereby petition for a five-month extension of time. Applicants have previously established small-entity status. The fee for a five-month of extension of time for a small entity is \$945 and under 37 C.F.R. §1.17(r) the fee for filing a submission

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01 FC:228

945.00 OP

08/03/2001 CHGUYEN 00000101 08475784

355.00 OP

02 FC:246



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Applicants : Philip Livingston and Friedhelm Hellmuth  
S. Serial No.: 08/475,784  
Filed : June 7, 1995  
Page 2

after final rejection is \$355. Applicants enclose a check in the amount of \$1300.00 to cover these fees. Accordingly, the subject application is pending. Therefore, the Amendment, attached hereto as Exhibit 1, is now due July 27, 2001 and is being timely filed.

Under 37 C.F.R. §1.129(a), applicants in an application that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365 (c), are entitled to have a First Submission entered and considered on the merits after final rejection if the First Submission and the fee set forth in §1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application.

For its earliest priority date, the subject application claims priority of U.S. Serial No. 08/009,268, filed January 22, 1993. Therefore, taking into account this priority reference this application has been pending for at least two years as of June 8, 1995. This Communication is prior to the filing of an Appeal Brief and prior to abandonment of the subject application. Accordingly, the Amendment in Response to June 27, 2000 Final Office Action as a First Submission is being timely filed.

The fee under 37 C.F.R. §1.17(r) for consideration and entry of a first submission after a final rejection is \$355.00. As stated hereinabove, applicants enclose herewith a check which includes this fee.

Under 37 C.F.R. §1.129(a), the finality of the final rejection is automatically withdrawn upon the timely filing of the First Submission and the payment of the fee set forth in §1.17(r). Accordingly, applicants respectfully request that the finality

Applicants : Philip Livingston and Friedhelm Helling  
U.S. Serial No.: 08/475,784  
Filed : June 7, 1995  
Page 3

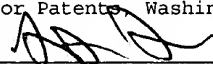
of the June 27, 2000 Final Office Action be withdrawn and the Amendment in Response to June 27, 2000 Final Office Action as a First Submission be considered as the First Submission.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants's undersigned attorney invites the Examiner to telephone either of them at the number provided below.

No fee, other than the enclosed \$1300.00 fee, which includes the \$945.00 fee for a five month extension of time and the \$355.00 fee under 37 C.F.R. §1.17(r), is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
	7-27-01
John P. White	Date
Reg. No. 28,678	
Spencer H. Schneider	
Reg. No. 45,923	

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Docket No. 43016-C/JPW/SHS

In re application of: Philip O. Livingston and Friedhelm Helling

Serial No.: 08/475,784

Group Art Unit: 1645

Filed: June 7, 1995

Examiner: P. Duffy

For: GANGLIOSIDE-KLH CONJUGATE VACCINES PLUS QS-21

HONORABLE ASSISTANT COMMISSIONER FOR PATENTS  
Washington, D.C. 20231

S I R:

July 27, 2001

Transmitted herewith is an amendment to the above-identified application.

  X   Small entity status of this application under  
37 C.F.R. § 1.9 and § 1.27 has been established by  
a verified statement previously submitted.

       a verified statement to establish small entity  
status under 37 C.F.R. § 1.9 and § 1.27 is enclosed.

       No additional fee is required.

The filing fee is calculated as follows:

	NUMBER AFTER AMEND- MENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	NUMBER OF EXTRA CLAIMS PRESENTED	RATE		FEE	
				SMALL ENTITY	OTHER ENTITY	SMALL ENTITY	OTHER ENTITY
Total Claims	20	* 29	*** 0	x 9	18	= 0	0
Indepen- dent Claims	2	** 4	*** 0	x 40	80	= 0	0
Multiple Dependent Claims(s) Presented <u>      </u> Yes <u>  X  </u> No				135	270	0	0
For First Time:				TOTAL ADDITIONAL \$ 0			
				FEE			

\*If the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than  
20, write "20" in this space.

\*\*If the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than  
3, write "3" in this space.

\*\*\*If the difference between the "NUMBER AFTER AMENDMENT" and  
the "HIGHEST NUMBER PREVIOUSLY PAID FOR" is less than  
"0", write "0" in the space.

Applicants: Philip O. Livingston and Friedhelm Helling  
Serial No : 08/475,784  
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Amendment Transmittal Letter  
Page 2

The "HIGHEST NUMBER PREVIOUSLY PAID FOR" (Total or Independent) is the highest of the "NUMBER AFTER AMENDMENT" in any prior amendment or the number of claims as originally filed.

\_\_\_\_ Please charge Deposit Account No. \_\_\_\_\_  
in the amount of \$ \_\_\_\_\_.

  X   A check in the amount of \$ 1300.00 is enclosed.

  X   The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 03-3125. Three copies of this sheet are enclosed.

  X   Any filing fees under 37 C.F.R. §1.16 for the presentation of extra claims.


  X   Any patent application processing fees under 37 C.F.R. §1.17.

Respectfully submitted,



John P. White  
Registration No. 28,678  
Spencer H. Schneider  
Registration No. 45,923  
Attorneys for Applicant(s)  
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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

 7-77-01  
John P. White Date  
Reg. No. 28,678  
Spencer H. Schneider  
Reg. No. 45,923